

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

Commandant (CG-OES-2)
Attn: Vessel and Facility Operating
Standards Division
U.S. Coast Guard STOP 7509
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7509
Phone: (202) 372-1444
Fax: (202) 372-8382
Email: Curtis.E.Borland@uscg.mil

16113
February 15, 2019

Texas Gulf Terminals Inc.
Attn: Ms. Denise Rogers
1401 McKinney, Suite 1500
Houston, Texas 77010

Dear Ms. Rogers:

By notice provided in this letter, the Coast Guard (Coast Guard) and Maritime Administration (MARAD) have determined that in order to complete the Texas Gulf Terminals oil export deepwater port application Environmental Impact Statement (EIS), we must suspend the timeline ("stop clock") for processing this application.

An applicant for a license under the Deepwater Port Act may be required to provide "any analysis" deemed necessary to the processing of its application (33 Code of Federal Regulations (C.F.R.) § 148.107(a)). In order to complete development of the Texas Gulf Terminals EIS, we require you to provide complete information, and environmental impact analysis where applicable, on the following matters:

A. Army Corps of Engineers (Corps) Requirements

In a letter to Texas Gulf Terminals dated July 24, 2018, the U.S. Army Corps of Engineers (Corps) requested additional information regarding Texas Gulf's Army Permit Application SWG-2018-00563. The requested information included, but was not limited to, a Tier II Water Quality Questionnaire and a conceptual mitigation plan. The Corps required the information to continue its review of Texas Gulf Terminal's proposed deepwater port project. The Corps advised that if the requested information was not received within 30 days, Texas Gulf Terminal's permit application would be withdrawn.

On October 23, 2018, the Corps sent Texas Gulf Terminals a letter which notified that the Corps had not received all of the requested information and, therefore, Army Permit application SWG-2018-00563 was withdrawn. By email correspondence dated January 31, 2019, the Corps confirmed to the Coast Guard that Texas Gulf Terminals has not resubmitted its permit application, which would necessarily include the Tier II Water Quality Questionnaire and conceptual mitigation plan originally requested by the Corps in its letter of July 24, 2018. In processing an application, the Deepwater Port Act requires the Coast Guard and MARAD (pursuant to delegations from the Secretaries of Homeland Security and Transportation) to comply with the National Environmental

Policy Act (NEPA). Such compliance “shall fulfill the requirements of all Federal agencies in carrying out their responsibilities under NEPA.”

The submission of a legally sufficient Army Corps permit application that includes all of the information required by the Corps is a prerequisite for the Coast Guard and MARAD to complete the Texas Gulf Terminals EIS, which evaluates the direct, indirect, and cumulative impacts of Texas Gulf Terminals’ proposed action.

B. State/Federal Water Quality Certification Requirements

Related to, but separate from, the above, is the requirement for Texas Gulf Terminals to receive, or be issued a waiver from, the requirement to receive a Section 401 state water quality certification from the Railroad Commission of Texas (Commission). The Commission is the state of Texas’ section 401 certifying agency for issuance of Department of the Army (Corps of Engineers) permits associated with oil and gas development projects. Concurrent with the processing of a Corps permit application, the Commission reviews the application under Section 401 of the Clean Water Act and Title 16, Texas Administrative Code, Section 3.93 to determine if the proposed work will comply with applicable water quality laws and regulations. Because Texas Gulf Terminals’ permit application to the Corps was withdrawn on October 23, 2018, section 401 certification is held in abeyance and EIS preparation is delayed regarding prevention and abatement of pollution of surface waters associated with the onshore aspects of the Texas Gulf Terminals deepwater port project.

C. Survey Requirements

Benthic Surveys: During a conference call held on February 6, 2019, Texas Gulf Terminals confirmed that a benthic survey was planned to be conducted along the proposed offshore pipeline route to the deepwater port location. It was stated that the report of survey findings would be ready in a period of 3 – 4 weeks. This report is required to assess the potential effects on benthic environment of offshore pipeline construction, pile driving, placement of the anchor array, and the short term and long term environmental impacts of the construction and operation of the port.

Archeological Surveys: On February 4, 2019, the Texas Historical Commission (THC) confirmed by email to the Coast Guard that no archeological survey for the Texas Gulf Terminals onshore project area (i.e., from the onshore storage terminal to the Laguna Madre) has been completed, despite the THC’s request for such survey made in a letter dated August 31, 2018. On a conference call held on February 6, 2019, Texas Gulf Terminals indicated it had submitted, and THC has approved, a survey plan; however, no date was provided when the survey, or report documenting results, would be completed. It is not clear whether the authorized archeological survey includes the upland area that encompasses the additional pipeline infrastructure described in paragraph D. below.

D. Pipeline Infrastructure

On July 31, 2018, the Coast Guard determined Texas Gulf Terminals' application was complete (i.e., contained information sufficient to commence processing). Despite the determination of completeness, the notification letter advised Texas Gulf Terminals its application did not include information related to "the pipeline infrastructure that will feed the OSTF [Onshore Storage Terminal Facility]." Recently, Texas Gulf Terminals submitted its "Incoming Pipelines Environmental Evaluation," which purports to analyze the environmental impact of two "preliminary pipeline routes" from an unspecified "existing facility" to Texas Gulf Terminals' proposed OSTF. The Coast Guard and MARAD are unable to ascertain from the document which pipeline route, if either, is Texas Gulf Terminals' preferred pipeline route, or if both are simply "potential pipeline alignments" subject to change in the future. This level of uncertainty over where Texas Gulf Terminals plans to source its feed oil, and the pipeline route that will supply the deepwater port, must be resolved before publication of a Draft EIS can occur. Other matters related to this include, but are not limited to:

- 1) it does not appear that Texas Gulf Terminals has coordinated with, or submitted an application to, the Corps under section 404 of the Clean Water Act for construction of this section of pipeline;
- 2) there is no evidence that appropriate air emissions modeling has occurred to evaluate the consequences of pipeline construction activities;
- 3) the report states construction activities are "likely to adversely affect" listed endangered flora species which will require consultation under the Endangered Species Act and may require consideration of an entirely different pipeline route;
- 4) there is no indication that consultation has occurred with the Texas Historical Commission on whether a cultural resources/archeological survey is required for this section of pipeline;
- 5) the report states that after pipeline construction is completed, "all wetlands and WOUS [Waters of the U.S.] will be returned to preexisting conditions, therefore resulting in zero permanent impacts to WOUS." However, nowhere in the report are baseline conditions for the wetlands and waters of the U.S. described and analyzed;
- 6) no draft SPCC plan is provided;
- 7) construction methods through waterways and wetlands are not specified and no evaluation of environmental impact can be determined; and
- 8) there is no description of what, if any, construction activities may be required to make pipeline connections at the "existing facility," or whether the facility will need to change its operations to accommodate Texas Gulf Terminals' construction and operations. A comprehensive list of "data gaps" will be provided to Texas Gulf Terminals and posted on the docket.

This "stop clock" is effective from the date of this letter until such time as the Coast Guard and MARAD: 1) receive the required information; and 2) make a determination that the required information is sufficient to fulfill the requirements of the National Environmental Policy Act and complete preparation of the Texas Gulf Terminals EIS.

The period of the "stop clock" does not count against the time limits set forth in 33 C.F.R. § 148.276. During the period of "stop clock," we will continue to work with our third party contractor, other Federal and State cooperating agencies, and your project team on development of the EIS in resource areas not related to the requested information.

Finally, I note that due to a lapse in appropriations, the Federal Government partially shut down from December 22, 2018 through January 25, 2019. Due to the direct and unavoidable effect the shutdown had on the Texas Gulf Terminals federal project team, the 35 days encompassed by the shutdown are not counted against the statutory and regulatory time limits. As of the date of this letter, the statutory clock is day 158, which includes the 35 days subtracted due to the lapse in appropriations.

If you have any questions, please contact Mr. Roddy Bachman, Coast Guard, at (202) 372-1451; Roddy.C.Bachman@uscg.mil; or Ms. Yvette M. Fields, MARAD, at (202) 366-0926; Yvette.Fields@dot.gov.

Sincerely,



S. T. BRADY
Chief, Office of Operating &
Environmental Standards
U.S. Coast Guard
By Direction



Yvette M. Fields
Director, Office of Deepwater
Port Licensing and Offshore Activities
Maritime Administration

cc: Docket # MARAD-2018-0114